

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LARRY M. PRESBY, II,

Plaintiff,

v.

ORDER

CORRECTIONAL OFFICER SEAN BAUMGARD,

Case No. 23-cv-447-jdp

Defendant.

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Plaintiff Larry M. Presby, II, a prisoner in the custody of the Wisconsin Department of Corrections, has submitted a proposed civil action under 42 U.S.C. § 1983. Plaintiff has also filed letter, which I will construe as a motion to use release account funds to pay the entire \$402<sup>1</sup> fee for filing this case. Dkt. 2. However, with the exception of initial partial payments, federal courts lack the authority to tell state officials whether and to what extent a prisoner should be able to withdraw money from a release account. Therefore, plaintiff cannot use release account funds to pay the full \$402 filing fee.

For this case to proceed, plaintiff must submit a properly supported motion for leave to proceed without prepayment of the filing fee no later than July 28, 2023. A motion for leave to proceed without prepayment of the filing fee must be accompanied by a certified copy of plaintiff's inmate trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the date of the complaint. 28 U.S.C. § 1915(a)(2).

If I find that plaintiff is indigent, I will calculate an initial partial payment amount that must be paid before the court can screen the merits of the complaint under 28 U.S.C. §

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<sup>1</sup> Effective December 1, 2020, the total fee for filing a civil action is \$402 (the \$350 statutory fee plus the \$52 miscellaneous administrative fee).

1915(e)(2). Thereafter, plaintiff will be required to pay the balance of the filing fee in installments.

As previously mentioned in this order, plaintiff may use release account funds to pay an initial partial payment. However, before officials take any portion of the initial partial payment from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes.

ORDER

IT IS ORDERED that,

1. Plaintiff Larry M. Presby, II's motion for use of release account funds to pay the entire \$402 filing fee in this case, dkt. 2, is DENIED.
2. Plaintiff may have until July 28, 2023, to submit a motion for leave to proceed without prepayment and a trust fund account statement for the period beginning approximately January 5, 2023 and ending approximately July 5, 2023. If, by July 28, 2023, plaintiff fails to respond to this order, I will assume that plaintiff wishes to withdraw this action voluntarily. In that event, the case will be closed without prejudice to plaintiff filing the case at a later date.

Entered this 7th day of July, 2023.

BY THE COURT:

/s/  
ANDREW R. WISEMAN  
United States Magistrate Judge

**UNITED STATES DISTRICT COURT  
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**PRISONER REQUEST TO PROCEED IN DISTRICT COURT  
WITHOUT PREPAYING THE FULL FILING FEE**

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Answer the following questions to the best of your ability.

**Note:** If you do not tell the truth, the court may dismiss your lawsuit.

**I. Personal Information**

- 1) Your name: \_\_\_\_\_  
(a) State the place of your incarceration and provide your prisoner identification number:

\_\_\_\_\_ (place)

\_\_\_\_\_ (number)

- (b) Are you employed at the institution?  Yes  No  
(c) Do you receive any payment from the institution?  Yes  No

**Attach a printout of your prison trust account statement showing transactions for the six-month period immediately preceding the filing of this request and showing the current balance of your account.**

- 2) Do you have any dependents that you are responsible for supporting?

Yes  No

If "yes," list them below.

<u>Name or initials (for minor children only)</u>	<u>Relationship to You</u>	<u>Age</u>	<u>Amount of Support Provided per Month</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

**II. Property or Assets:** - If you are married, your answers must *include your spouse's property.*

1 ) Do you own a car?

Yes       No

If "yes," list the car(s) below:

<u>Make and Model</u>	<u>Year</u>	<u>Approximate Current Value</u>
_____	_____	\$ _____
_____	_____	\$ _____

2) Do you own your home(s)?       Yes       No

If "Yes," state the approximate value(s).      \$ \_\_\_\_\_

What is the amount of equity (assessed value of residence minus outstanding mortgage balance) in the home(s)? \$ \_\_\_\_\_

3) Do you have any cash or checking, savings, or other similar accounts?

Yes       No

If "Yes," state the total of such sums.      \$ \_\_\_\_\_

4) Do you own any other property of value, such as real estate, stocks, bonds, trusts, or individual retirement accounts (e.g., IRA, 401 k), artwork, or jewelry?

Yes       No

If "Yes," describe the property and the approximate value(s).

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### III. Litigation History

For each federal lawsuit that you recall having filed, list as much of the following information that you remember about each case: The name of the case (that is, the plaintiffs and the defendants), the case number or year of filing, and the federal district in which you filed the case. Use more paper if needed.

Case Name (Plaintiffs and defendants)	Case number (or year of filing)	Federal district
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

### IV. Other Circumstances - Describe any other financial circumstance(s) that you would like the court to consider when reviewing this petition.

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I, \_\_\_\_\_, declare that I am the plaintiff bringing this complaint. I declare that I am unable to prepay the full filing fee and that I am entitled to the relief sought in the complaint.

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Date

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Signature - Signed Under Penalty of Perjury